

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

KERWIN D. SCOTT, )  
Plaintiff, )  
vs. ) Case No. 4:14-CV-01853-JAR  
JERRY W. MORGAN, et al., )  
Defendants. )

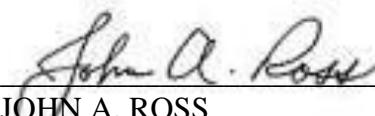
**MEMORANDUM AND ORDER**

This matter is before the Court on Defendant Shanta Pribble's Motion to Dismiss (Doc. 33). Defendant moves to dismiss Plaintiff Kerwin Scott's claim against her pursuant to Federal Rule of Civil Procedure 12(b)(6). However, a Rule 12(b)(6) Motion to Dismiss "must be made before pleading if a responsive pleading is allowed" and Defendant filed an answer prior to filing her Motion to Dismiss.<sup>1</sup> FED. R. CIV. P. 12(b). Therefore, Defendant's Motion to Dismiss is untimely. Although the Court could construe Defendant's Motion as a Motion for Judgment on the Pleadings pursuant to 12(c), the Court is unsure that this is Defendant's intent. *Westcott v. City of Omaha*, 901 F.2d 1486, 1488 (8th Cir. 1990). If Defendant would like to move for judgment on the pleadings, Defendant may do so in a separate motion.

Accordingly,

**IT IS HEREBY ORDERED** that Defendant Shanta Pribble's Motion to Dismiss (Doc. 33) is **DENIED without prejudice**.

Dated this 8th day of October, 2015.

  
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JOHN A. ROSS  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup> Defendant Shanta Pribble filed an answer on January 6, 2015 (Doc. 16) and her Motion to Dismiss on April 9, 2015 (Doc. 33).